

IN THE DISTRICT COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

In re:  
BROADBAND OFFICE, INC.,  
  
Debtor.

Case No. 04-407 (GMS)

BROADBAND OFFICE, INC.,  
  
Plaintiff,

Bankruptcy C.A. No. 01-1720 (GMS)  
Chapter 11

v.

TECHNOLOGY CREDIT CORPORATION  
d/b/a EXTREME NETWORKS CREDIT  
CORPORATION, EXTREME NETWORKS,  
INC.,  
and  
KEY EQUIPMENT FINANCE, INC. f/k/a/  
KEY CORPORATE CAPITAL, INC. f/k/a  
LEASTEC CORPORATION,

Defendants.

MOTION FOR LEAVE TO AMEND ANSWER AND CROSS-CLAIM

Defendant, Technology Credit Corporation d/b/a Extreme Networks Credit Corporation ("TCC"), hereby moves, pursuant to Federal Rule of Civil Procedure 15, for an Order granting it leave to serve and file an Amended Answer And Cross-Claim in the above-referenced action. Copies of the proposed form of the Amended Answer And Cross-Claim and a form of the Amended Answer And Cross-Claim that indicates in what respect it differs from the original pleading are attached hereto as Exhibits A and B respectively. The grounds for this motion are as follows:

1. Plaintiff filed the Complaint in this action on June 21, 2004. Thereafter, on December 23, 2005, plaintiff filed an Amended Complaint, adding Extreme Networks, Inc. (“Extreme”) and Key Equipment Finance Inc. f/k/a Key Corporate Capital, Inc. f/k/a/ Leastec Corporation (“Key”) as defendants. In the Amended Complaint, Plaintiff sought avoidance and recovery of alleged preferential transfers.

2. In the Amended Complaint, Plaintiff seeks to hold each defendant jointly and severally liable to it for the alleged preferential transfers. TCC’s Amended Answer and Cross-Claim adds a cross-claim against Key alleging that the preferential transfers were made to and for the benefit of Key. Accordingly, to the extent that TCC is found liable to Plaintiff, TCC is entitled to equitable indemnification, apportionment and contribution from Key.

3. The standards applicable to a motion to amend are well established under Federal law. Federal Rule of Civil Procedure 15 explicitly provides that “leave to amend shall be freely given when justice so requires.” *N.A.I.F. Inc. v. Snyder*, 2005 WL 735554, \*2 (D.Del. (Exhibit C)). “In the absence of substantial or undue prejudice, denial of a motion for leave to amend a pleading ‘must be based on bad faith or dilatory motives, truly undue or unexplained delay, repeated failures to cure the deficiency by amendments previously allowed, or futility of amendment.’” *Id.* (quoting *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1414 (3d Cir. 1993)).

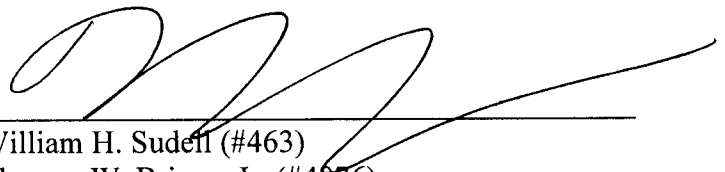
4. No written discovery has yet been taken of Plaintiff, Key or Extreme, no depositions have been taken and no substantive motions have been decided. The Amended Answer and Cross-Claim does not alter the answer to the Amended Complaint, but merely adds as a cross-claim a claim that to the extent TCC is found liable to Plaintiff, TCC is entitled to equitable indemnification, apportionment and contribution from Key. TCC understands that the parties are aware of the facts alleged in the Amended Answer and Cross-Claim, and the case has

not proceeded to a point where any party would have to expend substantial time or resources to address these issues. This is TCC's first request to amend and trial is not scheduled to begin until May, 2007.

5. Finally, Plaintiff, Key, and Extreme have advised TCC that they do not oppose this motion to amend.

WHEREFORE, TCC respectfully requests that the Court enter an Order in the form attached granting it leave to file an Amended Answer And Cross-Claim.

MORRIS, NICHOLS, ARSHNT & TUNNELL LLP

A handwritten signature in black ink, appearing to read 'William H. Sudell', is written over a horizontal line.

William H. Sudell (#463)

Thomas W. Briggs, Jr. (#4676)

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*Attorneys for Technology Credit Corporation d/b/a*

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June 15, 2006

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**CERTIFICATE OF SERVICE**

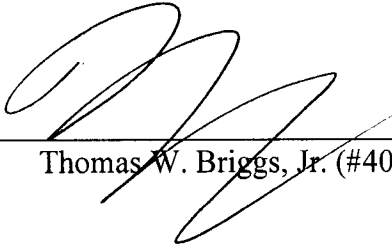
I, Thomas W. Briggs, Jr., Esquire, hereby certify that copies of the foregoing MOTION FOR LEAVE TO AMEND ANSWER AND CROSSCLAIM were caused to be served on June 15, 2006 upon the following counsel in the manner indicated:

**BY ELECTRONIC SERVICE**

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Thomas W. Briggs, Jr. (#4076)

June 15, 2006

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